

立法會

Legislative Council

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Bills Committee on Apology Bill

Background brief

Purpose

This paper provides background information on the Apology Bill ("the Bill") and highlights the views expressed by members of the Panel on Administration of Justice and Legal Services ("the Panel") on the proposed legislation.

Background

2. In Hong Kong, parties to civil disputes may be deterred from making apologies, expressions of regret or other similar expressions because of concerns about the potential legal implications, such as apology being admitted in evidence to determine fault or liability in legal proceedings, extending limitation periods and adversely affecting insurance coverage where the insurance contract contains a clause prohibiting the admission of fault by the insured without the insurer's consent. According to the Administration, apology legislation has been enacted in the United States, Australia, Canada and Scotland to address some of these concerns.

3. In November 2012, the Secretary for Justice ("SJ") established the Steering Committee on Mediation¹ ("Steering Committee"). The Regulatory Framework Sub-Committee under the Steering Committee was tasked to consider whether it is desirable to introduce apology legislation in Hong Kong. Two rounds of six-week public consultation were conducted in June 2015 and February 2016. The majority of the responses received were in favour of enacting apology legislation in Hong Kong. There was also support for the legislation to protect statements of fact conveyed in an apology, although views differed as to whether the court should retain a discretion to admit such statements as evidence against the apology maker in appropriate circumstances.

¹ The Steering Committee was chaired by SJ and comprised representatives from different sectors including legal professionals, mediation experts, medical practitioners, academics, administrators, social workers and insurers.

4. In November 2016, the Steering Committee published its final report, recommending new legislation to make evidence of a person's apology inadmissible for determining fault or liability in all civil proceedings, subject to certain exceptions.

The Bill

5. The Bill, containing 13 clauses and a Schedule, seeks to promote and encourage the making of apologies in order to prevent the escalation of disputes and facilitate their amicable settlement by clarifying the legal consequences of making an apology.

Consultation with the Panel

6. The Panel was briefed on the proposed apology legislation at its meetings on 22 June 2015, 22 February and 28 November 2016. Members generally supported the legislative proposal, but raised various concerns as summarized below.

Protection of statements of fact conveyed in an apology

7. Members noted that whether the proposed legislation should protect statements of fact conveyed in an apology was one of the major concerns of the stakeholders, and enquired about the position of the Department of Justice in this regard. SJ pointed out that currently no overseas jurisdiction made reference to statements of fact in its apology legislation. The Steering Committee took the view that the apology legislation should cover and protect statements of fact in connection with the matter in respect of which an apology had been made. However, the Court could exercise its discretion to admit such factual information as evidence in appropriate circumstances.

8. On a question as to whether any guidelines would be devised on how to disclose facts for makers of the apology so that the factual information conveyed in an apology would not be admissible as evidence of fault or liability, the Administration advised that it would not devise such guidelines at this stage .

The Court's discretion to admit statements of fact as evidence

9. Some members expressed concern on the Court's discretion to admit an apology containing statements of fact as evidence against the maker of the apology, while others were concerned whether the rights of the claimants would

be unduly affected as the statements of fact given in an apology were protected and not regarded as admissible evidence in court during litigation. The Administration explained that the Court would consider the evidence available in the litigation and other relevant circumstances so as to strike a balance between the legislative intent of enacting apology legislation and the claimant's right to seek justice through judicial proceedings to ensure the exercise of its discretion in a fair and equitable manner. The Administration would not stipulate in full in the proposed apology legislation the circumstances under which the Court would have the discretion to admit statements of fact as evidence against the maker of the apology, as this might rule out other possible circumstances where the Court found it just and equitable to do so having regard to all the relevant circumstances.

10. In response to an enquiry on whether the Court had any discretion to admit the statement of facts given in an apology as evidence which might be considered beneficial to the defence side, the Administration clarified that the proposed apology legislation only provided that the statements of fact given in an apology were not admissible by the Court to the prejudice of the maker of the apology. On the contrary, it did not impose any restrictions on the apology maker who might want to use his/her apology as evidence in court.

11. On the concern that the Court's discretion would create uncertainty and therefore discourage people from disclosing facts when making apologies, the Administration advised that the Court's discretion would only be invoked in exceptional circumstances, e.g. the statement of fact accompanying an apology was the only piece of evidence available, the legal representative should be able to advise their clients whether the factual information conveyed in an apology would be regarded as admissible evidence by reviewing if there was any other evidence available for establishing legal liability.

12. To increase the certainty of the proposed legislation, the Panel suggested that the Administration should consider revising the wordings of the provisions concerning the Court's discretion and specifying that in principle the factual information accompanying an apology was protected, and the Court might exercise its discretion only under limited circumstances.

Applicable proceedings of the proposed apology legislation

13. Noting that two regulatory bodies expressed opposing views and concerns that their regulatory functions and powers might be compromised if the apology legislation applies to regulatory proceedings, a member asked why the Steering Committee recommended that the apology legislation should generally be applicable to regulatory proceedings. The Steering Committee considered that similar to disciplinary proceedings, liability in regulatory proceedings would seldom be established solely on the basis of apologies.

14. As individual Legislative Council ("LegCo") Members were asked by some members of the public to apologize because of their conduct/misbehaviour during the oath-taking or Council meeting, a member enquired how the apology legislation would apply to the business of LegCo given that LegCo performed its powers and functions within the framework of the Legislative Council Ordinance (Cap. 542) and the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). The Administration advised that the proposed apology legislation would apply to all civil proceedings including disciplinary and regulatory proceedings with the exception of proceedings conducted under the Commissions of Inquiry Ordinance (Cap. 86), the Control of Obscene and Indecent Articles Ordinance (Cap. 390) and the Coroners Ordinance (Cap. 504), which were fact-finding in nature and did not involve any determination of liability. The legal dispute in relation to the oath-taking of individual LegCo Members was about the constitutional requirement under the Basic Law. The issue was very different from that in civil proceedings which mainly involved determination of liability and/or compensation.

15. In response to an enquiry about the application of the apology legislation in construction projects involving disputes to be settled by arbitration instead of litigation, the Administration advised that the apology legislation would be applicable to arbitral proceedings.

16. Question was also raised on why the proposed apology legislation would not be applicable to criminal proceedings. SJ explained that criminal proceedings were instituted under the name of the Government from a public interest perspective to deter crimes and punish criminals. Also, no apology legislation enacted elsewhere covered criminal proceedings explicitly.

Relevant papers

17. A list of relevant papers is at the **Appendix**.

Appendix

Bills Committee on Apology Bill

List of relevant papers

Meeting	Date of meeting	Paper
Panel on Administration of Justice and Legal Services	22.6.2015	LC Paper No. CB(4)1168/14-15(05) Minutes
Panel on Administration of Justice and Legal Services	22.2.2016	LC Paper No. CB(4)604/15-16(03) Minutes
Panel on Administration of Justice and Legal Services	28.11.2016	LC Paper No. CB(4)150/16-17(03) Minutes

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